Ontario Securities Commission

PERSPECTIVES

Volume 4, Issue 1

Winter 2001

Inside...

FEATURE

Financial Reporting in Canada's Capital Markets

The Canadian Securities Administrators recently released a Discussion Paper soliciting public comment on possible changes to the rules governing the accounting standards used for financial statements filed by reporting issuers in Canada's capital markets. The Discussion Paper asks whether it would be appropriate to relax the current rules to allow some or all Canadian and foreign reporting issuers to file in Canada using International Accounting Standards (IAS), U.S. GAAP and perhaps other bases of accounting, with limited or no reconciliation to Canadian GAAP

The growth of cross-border financing activity around the world has focused attention on impediments to issuers wishing to offer their securities or have them listed in another country. Differences in accounting standards have been identified as a significant impediment. The International Organization of Securities Commissions has been working with the International Accounting Standards Committee to

(continued on page 11)

INDEX

Perspectives welcomes letters to the Editor. Letters should be sent to The Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

MFDA – SRO Status

The Ontario Securities Commission has recognized the Mutual Fund Dealers Association of Canada as a self-regulatory organization for mutual fund dealers carrying on business in Ontario.

The terms and conditions under which the OSC recognized the MFDA are provided in the February 16 edition of the the OSC Bulletin. The British Columbia and Saskatchewan Securities Commissions also recognized the MFDA on the same terms and conditions.

The OSC also approved a rule that will require all mutual fund dealers registered in Ontario to become members of the MFDA by July 2, 2002.

In Ontario, the rule will be in effect after government approval is obtained.

Similar rules have been, or will be introduced in other jurisdictions. Once the rules come into force, all registered mutual fund dealers in applicable jurisdictions will be required to prepare and submit an MFDA application for membership, together with the MFDA's prescribed fees by July 2, 2002.

For more information call **Rebecca Cowdery**, Manager, Investment Funds, (416) 593-8129, or **Tamara Hauerstock**, Investment Funds, (416) 595-8915.

Proficiency Requirements

The OSC has passed a rule that requires individuals and firms engaged in financial planning to meet new proficiency standards that have been developed by a special CSA Committee. Subject to approval by the Minister of Finance, Multilateral Instrument 33-107 and related Forms will come into force on February 15, 2002.

"The proficiency standard includes passing the Financial Planning Proficiency Examination (FPPE)."

The Instrument applies to individuals and firms registered to trade or advise under securities laws. The Instrument requires individual registrants who hold themselves out under a variety of titles specified in the Instrument to satisfy an objectively determined proficiency standard. When used by securities registrants, these titles convey the impression that financial planning or similarly objective, comprehensive, integrated personal financial advice is offered.

Registered firms that use the restricted titles as business names or use a restricted service description are required to provide those advertised services, and to provide them through officers, employers or agents who meet the proficiency standards.

The same restrictions apply to titles and service descriptions used by licensed insurance agents and agencies.

Proficiency Standard

The proficiency standard created by the Instrument consists of:

- Passing the Financial Planning Proficiency Examination (FPPE) sponsored by the CSA and insurance regulators;
- Two years of insurance or securities industry experience in the last five years; and
- Commitment to an approved continuing education program.

Individuals who have completed one of the financial planning education programs or testing processes specified in the Instrument, or who enroll in a specified program before March 31, 2001 and in most cases complete it no later than March 31, 2003, will not need to write the FPPE. This grandfathering relief will expire on March 31, 2004.

The Instrument and the Forms have been, or are proposed to be adopted in certain CSA jurisdictions including Ontario, Nova Scotia, and Saskatchewan. A comprehensive regulatory regime governing financial planning came into effect in Quebec in 1999 as part of a larger regime governing professionals in the province.

For more information, please call **Julia Dublin**, Chair, CSA Committee on Financial Planning, (416) 593-8103.

February 16 (2001) 24 OSCB p. 1107

Amendments to Mutual Fund Rules

Amended National Instrument 81-101 Mutual Fund Prospectus Disclosure (NI 81-101) and National Instrument 81-102 Mutual Funds (NI 81-102) will:

- Permit index mutual funds to better achieve their investment objectives by allowing them to track their target indices without concentration limits, provided certain notice and disclosure requirements are adhered to; and

- Allow mutual funds to enter into securities lending, repurchase and reverse repurchase transactions on a basis that the CSA believe is appropriate to both ensure investor protection and permit mutual funds to realize the potential benefits of these transactions for their securityholders, provided certain notice and disclosure requirements are adhered to.

For more information, please call **Chantal Mainville**, Investment Funds, (416) 593-8168, or **Darren McKall**, Investment Funds, (416) 593-8118

The Minister of Finance Has Approved the Following:

Registration for US Broker-Dealers and Agents
National Instrument 35-101
Effective date: January 1, 2001

The National Instrument provides US broker-dealers and their agents with a conditional exemption from the applicable registration and prospectus requirements under Canadian securities legislation. The exemption facilitates certain cross-border trading in foreign securities between US broker-dealers and their clients from the US who are in Canadian jurisdiction.

Short Form Prospectus Distributions
National Instrument 44-101
Effective Date: December 31, 2000

The OSC published the final National Instrument, Companion Policy and Forms in a Special Supplement to the December 22, 2000 OSC Bulletin (2000) 23 OSCB.

Prospectus Disclosure in Certain Information Circulars
Rule 54-501
Effective date: December 31, 2000

The final Rule was published in the December 22 OSC Bulletin, (2000) 23 OSCB.

Standards of Disclosure for Mineral Projects
National Instrument 43-101
Effective date: February 1, 2001

The Commission published the National Instrument, Companion Policy and Form in the January 12, 2001 OSC Bulletin (2001) 24 OSCB.

REQUEST FOR COMMENT

Direct Purchase Plans

The OSC requested comment (comment period ended on February 16) on proposed Rule 32-501, which will permit reporting issuers to establish direct purchase plans in Ontario. Direct purchase plans would enable an issuer to issue securities directly to investors without selling them through a registrant.

Direct purchase plans are popular in the US, with over 1600 listed on a leading website about these plans. The OSC believes there is no compelling regulatory reason to prevent the establishment and development of plans in Ontario similar to those in the US.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8259 or **Barbara Fydell**, Legal Counsel, Market Regulation, (416) 593-8253.

November 17 (2000) 23 OSCB p. 7867

Reporting Issuer Defaults

The OSC has issued for comment a policy on how it determines that a reporting issuer is in default, amongst other related matters.

Proposed Policy 51-601 specifies that, even if financial statements have been filed by an issuer within the prescribed time period, the issuer will be considered to be in default if significant deficiencies are identified in those financial statements or in the issuer's continuous disclosure record. Under certain circumstances, this determination might be made before a Commission hearing has been held on the matter. Such a determination would be made only after the reporting issuer has been given an opportunity to discuss its views and remedy the deficiencies.

"Even if financial statements have been filed within the prescribed time period, the issuer will be considered to be in default if significant deficiencies are identified."

To be placed in default carries numerous potential consequences for a reporting issuer, including the possibility of a cease trade order and the inability to file a short form prospectus.

In general, the proposed policy outlines the guidelines followed and factors considered by the Commission in determining whether a reporting issuer is in default, as well as how a list of defaulting reporting issuers is maintained, and the procedure for obtaining a certificate of no default.

For more information please contact **John Hughes**, Continuous Disclosure, (416) 593-3695 or **Irene Tsatsos**, Continuous Disclosure (416) 593-8223.

OSCB December 8, 2000, p. 8246

Junior Natural Resource Issuers

The Commission is seeking comment on its preliminary decision to allow OSC Policy Statement No 5.2 – *Junior Natural Resource Issuers* to expire on July 1, 2001.

The Policy regulates the financing and, to some extent, the

operations of non-TSE listed junior natural resource reporting issuers in Ontario. It does not regulate technical reporting and disclosure, the focus of the new National Instrument 43-101, which upgrades the requirements in these areas.

The Commission's preliminary decision is based on the following factors:

- As a result of Canada's exchange restructuring, junior natural resource issuers are now primarily listed on CDNX, which has broadly equivalent regulation to that contained in Policy 5.2;
- As an Ontario-only policy, Policy 5.2 is inconsistent with the CSA's objective to establish consistent regulation; and
- The Small Business Task Force recommended that financing requirements and regulatory regimes not be industry specific.

For more information, please call **Rick Whiler**, Senior Accountant, Corporate Finance Branch, (416) 593-8127.

OSCB January 5, p. 115

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

New Appointments

Paul M. Moore has been appointed by Order-In-Council as one of the OSC's two Vice Chairs.

Prior to his appointment, Mr. Moore was a partner in the Toronto office of Torys. He practiced with Torys for the past 34 years in the areas of derivatives, securities, banking and trust, corporate/commercial, pension and insurance law and was head of the firm's Derivatives Practice Group.

Mr. Moore has extensive experience in all aspects of the financial institution and financial services industries and has had extensive interaction with stock exchanges and regulatory authorities for securities and banking.

The appointment is for five years.

Ralph Shay has been named Director, Take-over bids, Mergers and Acquisitions. He brings to the position over 20 years of experience in the securities field, first with the Toronto Stock Exchange where he was Vice President, Company Listings and Regulation, and then as a securities lawyer with the national law firm of Fraser Milner Casgrain. His responsibilities at the TSE included, among other things, adjudicating disputes relating to contested take-over bids and other contentious matters, and representing the TSE as counsel at hearings before the OSC.

Mr. Shay speaks frequently at industry and academic conferences on securities law and corporate governance, and is the author of a number of published papers in these areas.

Initial Report on Review of Revenue Recognition

Staff of the Continuous Disclosure team of the Corporate Finance Branch has recently issued an ***Initial Report on Staff's Review of Revenue Recognition Practices*** *(OSC Staff Notice 52-701).*

The notice reports Staff's preliminary findings and comments arising from its review of current practices used by a sample of 75 Canadian reporting issuers when recognizing, measuring, presenting and disclosing revenue.

"Five percent of the issuers provided sufficient information in response to staff's questions."

Staff's choice of revenue recognition as the subject for its earnings management review was influenced by numerous factors. Clearly, revenue is a highly significant element of financial reporting because of its direct effect on reported earnings. In addition, some users of financial statements are placing increased emphasis on revenue growth as a key indicator of value and performance, particularly for companies in the technology sector. Canadian accounting standards set out the principles governing recognition of revenue of all types but provide relatively little detailed and specific guidance on how those principles should be applied in specific circumstances. Various factors in the current business environment raise questions as to whether revenue recognition practices reflect a rigorous application of the relevant standards.

Of the 75 issuers included in the review:

- 5% of the issuers provided sufficient information in response to Staff's questions and did not generate any follow-up questions;
- 35% of the responses generated follow-up questions or comments on disclosure issues only; and
- 60% of the responses generated follow-up questions on recognition, measurement or presentation issues.

The issues raised by Staff are summarized in the notice and are typical of matters that will be questioned by staff on an ongoing basis as part of the continuous disclosure review program.

Initial results of the review suggest a need for significant improvement in the nature and extent of disclosure in both the financial statements and Management's Discussion and Analysis (MD&A). Staff have also identified certain situations they are investigating to determine whether particular revenue recognition, measurement and presentation practices reflect an appropriate application of the relevant standards.

As outlined in the report, it is staff's view that, although more specific guidance may be useful in Canada on certain matters, the guidance that is available in the US and elsewhere (such as in the SEC's Staff Accounting Bulletin (SAB) 101) is not being adequately considered by all issuers. This view was previously expressed in an article published in the Spring

2000 issue of OSC *Perspectives*. The notice elaborates in some respects on this view.

Staff continues to correspond with issuers on many of the specific issues identified in the notice, and will issue a final report following the resolution of all matters. Where issues have been identified for follow up and an issuer files a prospectus, staff will ask the issuer to address and resolve these matters prior to the receipt being issued.

For further information on staff's review, please call **John Hughes**, Manager, Continuous Disclosure at 416-593-3695, or **Irene Tsatsos**, Senior Accountant at 416-593-8223.

The Fourth Annual Investor Education Campaign

Each spring, the CSA implements a cross-Canada public awareness campaign which emphasises the importance of investor education and promotes the educational resources available from Canadian securities regulators and their partners.

The objectives of the campaign are to promote financial literacy, and the use of reliable educational tools and resources available to assist the investing public. This year's campaign urges Canadians to 'Invest Time Before You Invest', and encourages individual investors to practice a form of personal 'due diligence' on their advisers, investments and reliable sources of information.

Two cross-Canada initiatives are planned with community newspapers and youth broadcasts. CSA members will undertake a fuller slate of initiatives – based on local priorities – as part of their regional campaigns.

In Ontario, a number of regional initiatives are planned.

Preliminary Schedule of Events:

April 24
- TSE Investor Forum - Stock Market Place (Toronto)
- "Investment Risk – What Every Investor Needs to Know" Seminar (Toronto)
- "Protect Yourself from Investment Scams & Fraud" Conference (London)

April 25
- "Equity Valuation – Financial ratios and Financial Statements" Seminar (Toronto)
- ILC Investment Fraud Luncheon Seminar (Toronto)
- "Protect Yourself from Investment Scams & Fraud" Conference (Sarnia)

April 26
- JA School Blitz (Toronto/York Region)
- ILC Investment Fraud Luncheon Seminar (Toronto)
- Rogers Television Money Line Show (Province wide)
- IFIC Luncheon Seminar (Toronto)

We will be placing features in various magazines distributed in Ontario and two up-to-date booklets (Making a Complaint & With Whom are you Dealing – an investors guide to registrant categories) will be available to the investing public.

In the weeks leading up to the 2001 Investor Education Campaign please visit our website at www.osc.gov.on.ca for updates, times, and locations of events.

For more information please call **Theresa Kozinski** at 416-595-8917.

Commission Approval for CDNX Exemption

The Commission has approved an application from the Canadian Venture Exchange (CDNX) for exemption from recognition as a stock exchange under section 21 of the Act. The exemption order and the accompanying schedules were published in the OSC Bulletin on December 22, 2000.

CDNX is the product of the merger between the Alberta Stock Exchange and the Vancouver Stock Exchange. The Toronto Stock Exchange transferred its operation of the Canadian Dealing Network (CDN) to CDNX. CDNX is a recognized exchange in Alberta and British Columbia, and is subject to the direct oversight of the ASC and the BCSC. A Memorandum of Understanding (MOU) between the OSC, the ASC and the BCSC regarding oversight of CDNX has been developed.

CDNX also assumes responsibility for the operation of a system that reports trades of unlisted equity securities through, or by dealers. The Canadian Unlisted Board Inc. ("CUB"), a wholly owned subsidiary of CDNX, began operation in October 2000. Dealers are required to report trades in unlisted equity securities (that are not excluded from the reporting requirements) to CUB for surveillance and enforcement purposes. This information is not published. The Commission received a number of comments which objected the removal of the last trade price visibility that existed on CDN. The Commission has asked staff to monitor this issue and report back to the Commission.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257 or **Susan Greenglass**, Legal Counsel, Market Regulation, (416) 593-8140.

OSCB December 22, 2000, p. 8437

IOSCO Publication

The International Organization of Securities Commissions (IOSCO) and the Committee on Payment and Settlement Systems (CPSS) of the Central Banks of the Group of Ten Countries have recently published a Report containing a series of recommendations to improve the safety and efficiency of securities settlement systems.

The Report, entitled Recommendation for Securities Settlement Systems – Report of the CPSS-IOSCO Joint Task Force on Securities Settlement Systems is available on the IOSCO website (www.iosco.org). The Task Force is seeking public comments by April 9.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257 or **Maxime Pare**, Senior Legal Counsel, Market Regulation, (416) 593-3650.

OSCB January 26, 2001, p. 538

Take-Over and Issuer Bids

Amendments governing the conduct of take-over bids and issuer bids under securities legislation (colloquially known as the "Zimmerman Amendments") are intended to come into effect on March 31, 2001. In 1996 a committee of the Investment Dealers Association of Canada (the "Zimmerman Committee") issued a report setting out 14 recommendations on take-over and issuer bid time limits.

The Committee's key recommendation was lengthening the minimum bid time periods to permit the target company and its shareholders more time to consider the bid and to seek other offers, as well as giving offerors the option of commencing a take-over bid by way of advertisement.

"The Committee's key recommendation was lengthening the minimum bid time periods to permit the target company and its shareholders more time to consider the bid and to seek other offers..."

The CSA agreed to adopt the recommendations and established a committee to develop uniform wording for amendments in the eight jurisdictions with take-over and issuer bid provisions in their securities legislation. The committee completed its work in late 1997 and the first legislative amendments were passed in Alberta and British Columbia in 1998. The Zimmerman Amendments were subsequently passed but not proclaimed in Ontario and Saskatchewan in 1999 and are under consideration in Quebec and awaiting introduction in Manitoba, Nova Scotia and Newfoundland. However, it is intended that the Zimmerman Amendments will become effective in Manitoba, Nova Scotia and Newfoundland on March 31 by way of interim blanket order pending the passage of the necessary legislative amendments.

The Commission des valeurs mobilières du Québec (CVMQ) is not in a position to implement the Zimmerman Amendments until the necessary legislative amendments have been passed. If these legislative amendments are not proclaimed by March 31, 2001, two take-over/issuer bid regimes will exist in Canada. Therefore, if a bid involves offeree shareholders in both Quebec and a jurisdiction that has implemented the Zimmerman Amendments, bidders and targets will have to comply with both regimes. Where differences between the regimes exist, the more onerous rules must be complied with. The CVMQ intends to issue a Notice concerning the status of the Zimmerman Amendments in Quebec shortly, which will be available on their website.

The full text of the Zimmerman Amendments can be found on the Ontario Securities Commission website at: www.osc.gov.on.ca and were published in Ontario on December 24, 1999 at 22 OSCB 8395.

For more information, please call **Ralph Shay**, Director, Take-Over/Issuer Bids, Mergers & Acquisitions, (416) 593-2345.

FAQ's on the New Prospectus Rules

On December 31, 2000, the following rules and National Instruments came into effect:

- General Prospectus Requirements (Commission Rule 41-501);
- General Prospectus Requirements (National Instrument 41-101);
- Short Form Prospectus Distributions (National Instrument 44-101);
- Shelf Distributions (National Instrument 44-102); and,
- Post-Receipt Pricing (National Instrument 44-103).

These new rules govern the use of prospectuses, short form prospectuses, shelf prospectuses and PREP prospectuses by issuers other than mutual fund issuers.

In response to the questions received since the new prospectus rules came into effect, Staff of the CSA has decided that it would be helpful to issue some interpretational guidance. Consequently, Staff of the Corporate Finance Branch are now in the process of preparing CSA Staff Notice 44-301 ***Frequently Asked Questions Regarding the New Prospectus Rules***. When completed, OSC staff intends to publish the FAQ in both the OSC Bulletin and on the OSC website, concurrently with its publication by other CSA members. Staff hopes that the FAQ's will be a useful guide to issuers and their advisors in the preparation and filing of prospectuses.

For more information, please call **Michael Brown**, Legal Counsel at (416) 593-8266.

Web-based Investor Protection Resources

Videos based on a conference series on investor protection are now available on the Internet. The conference series, entitled "Protecting Yourself Against Investment Scams and Frauds," is the result of a partnership between the OSC and the Canadian Association of Retired Persons (CARP). The videos are available at www.fifty-plus.net.

Not-for-profit organizations can obtain free VHS tapes of the series through the OSC Inquiries Line at (416) 593-8314, tollfree at 1-877-785-1555, or CARP at (416) 363-8748.

For more information, please call **Alicia Ferdinand**, Investor Education Officer, (416) 593-8307.

CHIEF ECONOMIST REPORT

Global Data Warming

Global capital markets have come a long way since the days when an arbitrage trader could generate easy profits by reading ticker tape and taking advantage of price imbalances in different markets. Information flowed at a glacial pace and maintained value for much longer than it does today.

New technology has transformed the capital market arena. The introduction of computer screens, and the resulting ease with which information can be readily accessed, has rapidly increased the rate and flow of information available. Unfortunately this has also meant that the life-span and pertinence of this data is becoming increasingly shortlived. The structure of the industry has been equally altered as arb traders have been transformed into hedge funds and price discovery/execution have become real-time events.

One of the best examples of the rapid decay of information is the release of economic data. First, estimates are made and built into the market pricing. On release, there is a knee-jerk reaction within seconds to any difference between the expected and the announced numbers. Within three to ten minutes, the details are analyzed and a secondary wave of trading takes place. So, well before the opening of the equity markets, the data has been priced into securities and therefore has no value from an investment perspective.

The period from roughly 1975 to 1995 can be described as a temperate zone with a warming trend for information. The information pipeline became broader and more efficient, but by no means universal or instantaneous. The emphasis shifted from simply acquiring information and acting on it to uncertainty over who had what information and the quality of the information available.

One example of the impact of uncertainty, lies in trading day analysis. While less pronounced, for years far less trading took place on Mondays than on the rest of the week. Did investors simply take a lot of long weekends? More plausible is the view that institutional investors were concerned that insiders or dealers acquired new information over the weekend, putting the uninformed at a disadvantage. As information becomes more readily available and more rapidly reflected in prices, the trading day effect has become less pronounced.

Another example from this period deals with the value of analysts' rating changes. A study of changes in US consensus outlooks found that, if acted upon immediately, returns of 75 basis points a month over the market index were generated. Over a period of just two days, the value of that information decayed to a point statistically insignificant from zero.

This was before the advent of day-trading and internet bulletin boards. The tropical swamp of data that we wade through today has almost certainly accelerated the time decay of information.

The increasingly rapid decay in the value of information doesn't mean that the overall value is less; if anything it is worth more, just for shorter periods of time once released.

The implications for regulators are that, as always, there is little incentive for market participants to disclose information until profits have been locked in and, increasingly, the speed of dissemination is critical. The other side of immediate and widespread disclosure is the cost of implementation. We should keep this in mind when looking at major industry developments like T+1.

Even privileged access to liquidity and flow data is being challenged by electronic distribution both pre- and post-trade. While the upstairs market currently protects investors from the impact of large size trades while potentially benefitting dealers, the proliferation of electronic markets could change this structure as well. The ability to trade anonymously on a number of ECNs would allow large transactions to take place with minimum market impact and transaction cost.

The rewards implied by disintermediation are substantial. Greater equality and less tilt in the playing field of access to information are promoted. Improved access to the facts should generate a higher level of market integrity and increased participation in the capital markets. It also allows investors to focus on the critical element in investing – the degree of uncertainty surrounding future returns in the security, rather than privilege in access to data. This is similar to the shift from arb trader to hedge fund.

The huge growth in ECN participation in the US and discount brokers in both Canada and the US best illustrates the changes taking place. These new models are forcing dealers to rethink the role of the adviser as many investors question the need for them.

Greater access to information also means greater access to incorrect information and an increased need to process that information. Both have been factors in the increased market volatility.

Will the current state of data access continue to heat up, taking the markets from tropical to equatorial or a warm superconducting state? Will the programmed trading functions that have taken over some of the trading functions come to dominate the markets? Perhaps the web-based financial analysis packages that many of the brokers offer will develop into the long awaited intellibots scouring the web for opportunities and best execution.

In either case, rapid access to information will continue to be the most important feature in finance, and uncertainty over next year's markets will persist at least as long as tomorrow's weather continues to surprise us.

For more information, please call **Randall Powley**, Chief Economist, (416) 593-8072

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

OSC Approves Settlement of Proceeding Against Amalgamated Income Limited Partnership and 479660 B.C. LTD.

At a hearing on February 12, 2001, the Ontario Securities Commission (the "Commission") approved a settlement agreement entered into between Staff of the Commission and Amalgamated

Income Limited Partnership ("Amalgamated") and 479660 B.C. Ltd. (the "General Partner") (collectively, the "Respondents").

The Respondents admitted they contravened Ontario securities law and acted in a manner contrary to public interest. In the Settlement Agreement, the Respondents admitted to contraventions of the early warning reporting, insider trading reporting and take-over bid requirements contained in Parts XX and XI of the *Securities Act* (the "Act") during the period beginning from 1995 to 2000 in connection with certain acquisitions by Amalgamated of units in various limited partnerships, as well as a breach of representations to Staff concerning Amalgamated's compliance with these requirements. 479660, by virtue of its powers, duties and obligations as the General Partner of Amalgamated, admitted to authorizing the contraventions of the *Act* by Amalgamated contrary to public interest.

In accordance with the terms of the approved settlement, Amalgamated has filed the outstanding reports, and represented to Staff that it intends to comply with its reporting requirements under Ontario securities law. Outstanding filing fees in the amount of $60,038.86 have been paid to the Commission by Amalgamated, as well as the payment in the amount of $20,000.00 to the Commission in respect of a portion of the Commission's costs with respect to this matter.

The settlement further provides that the Respondents will submit to a review by Blake, Cassels & Graydon LLP of their compliance practices and procedures and report in writing to Staff and Blake, Cassels & Graydon LLP as to the implementation of the recommendations within reasonable timeframes.

OSC Approves Settlement in Proceeding Against Lois King

At a hearing on February 19, 2001, the Ontario Securities Commission (the Commission) approved a Settlement Agreement entered into between Staff of the Commission and Lois Doreen King.

Ms. King was a principal of Boulder Management Inc., a firm that managed four closely held investment funds distributed by private placement. Ms. King admitted that on several occasions in late 1999, she made inappropriate entries in Boulder's records, with the effect of overvaluing units of the various funds. Ms. King subsequently took steps to try to conceal this misconduct from Boulder's auditors.

In the Settlement Agreement, Staff of the Commission acknowledged that Ms. King had cooperated fully in the investigation of the matter and had brought about an early settlement.

The Commission ordered the following sanctions:

- Ms. King's registration be terminated;
- Ms. King be prohibited from trading in securities for a period of three years from the time she admitted her misconduct, except that she may trade for her own account; and
- Ms. King be reprimanded by the Commission.

OSC Approves Settlement Agreement and Imposes Sanctions Against Noram Capital Management, Inc. and Andrew Willman

At a hearing on February 9, 2001, the Ontario Securities Commission (the "Commission") approved a Settlement Agreement entered into between Staff of the Commission and Noram Capital Management, Inc. ("Noram") and Andrew Willman (the "Respondents").

The Settlement Agreement was signed on February 9, 2001, and the allegations are as follows:

The Respondents admitted they contravened Ontario securities law and acted in a manner contrary to the public interest. In the Settlement Agreement, the Respondents admitted they failed to deal fairly, honestly and in good faith with clients of Noram, over more than a seven year period by among other things, making unsuitable investments, failing to adequately disclose the risks associated with certain investments, including leveraged investments, making misleading statements to clients regarding investments, making misleading and inaccurate representations in advertising and promotional materials, engaging in personal trading and principal trading and self-dealing. In addition, the Respondents admitted that they breached an Order of the Commission dated September 29, 1999, which suspended Noram's registration effective October 7, 1999, by failing to provide the Commission with certain financial reporting documentation.

The Commission held that on the basis of the facts admitted in the Settlement Agreement, Andrew Willman showed a complete lack of concern for his clients and the marketplace, and that his conduct was as serious as any that has recently been before the Commission. The Commission held that Staff's characterization of the Respondents' conduct as "egregious" was a "mild understatement." The Commission stated that on the basis of the admitted facts the panel was prepared to make a finding that Mr. Willman was a "scoundrel."

The Commission ordered the following sanctions:

- Willman and Noram's registration be terminated permanently;
- Willman cease trading in securities permanently, including for his own personal account;
- Willman be prohibited from becoming or acting as a director or officer of any issuer permanently;
- Willman and Noram be reprimanded; and
- Willman and Noram pay costs in the amount of $82,500 to the Commission.

Global Privacy Management Trust and Robert Cranston

On December 8, 2000 the Ontario Securities Commission issued a Temporary Cease Trade Order against Global Privacy Management Trust and Robert Cranston for a period of fifteen days.

The hearing scheduled for December 20, 2000 on this matter has been adjourned and on the consent of the Respondents and Staff of the Commission, the Temporary Order has been extended until such time as a hearing in this matter is completed.

The Statement of Allegations is dated December 12, 2000, and the allegations are as follows:

- Robert Cranston ("Cranston") is the principal of GPMT;
- GPMT has an advertisement on the Internet which encourages potential investors to sign up for a free newsletter. The newsletter advocates investment in bank debenture trading programs and makes reference to a "250K program," which investors may obtain more information;

- The "250K program" purports to be an offering of preferred shares in a closed-end investment that will trade in investment grade fixed income securities. The program promises to pay a return of at least 12% per month over a term of 12 months;
- The respondents advertise that the shares in the investment are issued by a named registered limited market dealer. The named limited market dealer has no involvement in the advertised program;
- Neither GPMT nor Cranston is or was registered to trade in securities in any capacity under the *Act*;
- By soliciting investments in the trading programs, GPMT and Cranston traded in securities without registration, contrary to Ontario securities law; and
- The trading programs offered by GPMT and Cranston constituted a distribution of securities for which no prospectus was issued and no exemption was available, contrary to Ontario securities law.

First Federal Capital (Canada) Corporation and Monte Morris Friesner

On December 11, 2000, the Ontario Securities Commission issued a Temporary Cease Trade Order against First Federal Capital (Canada) Corporation and Monte Morris Friesner for a period of fifteen days.

The hearing scheduled for December 20, 2000 on this matter has been adjourned and on the consent of the Respondents and Staff of the Commission, the Temporary Order has been extended until such time as a hearing in this matter is completed.

The Statement of Allegations is dated December 12, 2000 and the allegations are as follows:

- Monte Morris Friesner ("Friesner") is the president and chief executive officer of First Federal;
- First Federal has an advertisement on the Internet which encourages potential investors to invest in Asset Securitization Management Portfolios and promises to pay a return of at least 20% and up to 70% or more with no risk (the "Trading programs");
- Neither First Federal nor Friesner, is or has ever been, registered in any capacity under Ontario securities law;
- The activities of First Federal and Friesner constitute trading in securities without registration, contrary to Ontario securities law; and
- The trading programs offered by First Federal and Friesner constitute a distribution of securities for which no prospectus was issued and no exemption was available, contrary to Ontario securities law.

Offshore Marketing Alliance and Warren English

On December 11, 2000 the Ontario Securities Commission issued a Temporary Cease Trade Order against Offshore Marketing Alliance and Warren English for a period of fifteen days.

The hearing scheduled for December 20, 2000 on this matter has been adjourned and on the consent of the Respondents and Staff of the Commission, the Temporary Order has been extended until such time as a hearing in this matter is completed.

The Statement of Allegations is dated December 12, 2000, and the allegations are as follows:

- Offshore Marketing Alliance ("OMA") is incorporated under the laws of Belize as an International Business Corporation, but carries on business in Ontario;
- Warren English ("English") is the principal of OMA;
- OMA purports to offer trading programs for the trading of securities. OMA uses Internet e-mail mailing lists to communicate the existence and terms of the trading programs;
- Neither OMA nor English is registered in any capacity under Ontario securities law;
- The sale of memberships and entries into the trading programs offered by OMA constituted a distribution of securities for which no prospectus had been issued and no exemption was available, contrary to Ontario securities law; and
- By soliciting investments in the trading programs, English and OMA traded in securities and acted as advisors without registration, contrary to Ontario securities law.

Terry Dodsley

On December 11, 2000 the Ontario Securities Commission issued a Temporary Cease Trade Order against Terry Dodsley for a period of fifteen days.

The hearing scheduled for December 20, 2000 on this matter has been adjourned and on the consent of the Respondent and Staff of the Commission, the Temporary Order has been extended until such time as a hearing in this matter is completed.

The Statement of Allegations is dated December 12, 2000, and the allegations are as follows:

- Terry G. Dodsley ("Dodsley") is not, nor has he ever been, registered with the Ontario Securities Commission (the "Commission") in any capacity;
- Dodsley has an advertisement on the Internet relating to investment opportunities and services;
- In October, 2000, Dodsley had an advertisement in an Ontario community newspaper advertising his services in the area of commodities trading;
- Dodsley traded in securities without being registered as required pursuant to Ontario securities law; and
- Dodsley held himself out as carrying on the business of advising with respect to securities, without being registered as required pursuant to Ontario securities law.

Ontario Court of Justice Convicts Arnold Guettler, Neo-Form Corporation and Neo-Form North America Corp. of Securities Offences

On February 6, 2001, the Honourable Mr. Justice Babe of the Ontario Court of Justice found Arnold Guettler, Neo-Form Corporation and Neo-Form North America Corp. guilty of:

- Trading in securities, namely shares and promissory notes issued by the Defendants, without being registered to trade in such securities.
- Trading in such securities without having filed a prospectus contrary to the *Securities Act*; and
- Making representations that the shares of Neo-Form Corporation and Neo- Form North America Corp. would be listed on a stock exchange with the intention of effecting

trades in such securities contrary to section 38(3) of the Securities Act.

The Defendants were found not guilty of giving undertakings as to the future value of the shares of Neo-Form Corporation and Neo-Form North America Corp. to potential investors with the intention of effecting trades in such securities contrary to section 38(2) of the Securities Act.

Between October 15, 1994 and January 10, 1997, the Defendants raised in excess of $2 million dollars from the sale of shares and promissory notes to approximately 140 investors.

The sentencing hearing for the Defendants before the Honourable Mr. Justice Babe is scheduled for 10:00 a.m. on April 17, 2001 at Old City Hall, 60 Queen Street West, Toronto.

OSC Approves Settlement for MacDonald Oil Exploration Ltd., MacDonald Mines Exploration Ltd., Mario Miranda and Frank Smeenk

At a hearing on January 12, 2001, the Ontario Securities Commission approved a settlement entered into between Staff of the Commission and MacDonald Oil Exploration Ltd., MacDonald Mines Exploration Ltd., Mario Miranda and Frank Smeenk. The Commission issued a Notice of Hearing and Statement of Allegations against the respondents on January 9, 2000.

In the Settlement Agreement the Respondents admitted to conduct that contravened various securities law requirements, including the following:

The Commission reprimanded the respondents and ordered MacDonald Oil to submit to a review of its practices and procedures, including its practices relating to compliance by its directors, officers and principal shareholders. The Commission also ordered that Mario Miranda cease trading in all securities for a six month period and Frank Smeenk cease trading in all securities for a twelve month period, subject to a limited exception permitting them to dispose of securities held on the date of the Settlement Agreement. The Commission prohibited Mario Miranda and Frank Smeenk from serving as the chair of MacDonald Oil's Board of Directors or as members of the MacDonald Oil Board's audit, corporate governance, compliance or executive committees but did not otherwise restrict their ability to serve as directors of MacDonald Oil. The Commission also prohibited Mario Miranda and Frank Smeenk from acting as officers of MacDonald Oil, subject to a limited exception permitting Frank Smeenk to continue to act as MacDonald Oil's executive vice president. Finally, the Commission ordered MacDonald Oil to pay $50,000, MacDonald Mines to pay $15,000, Mario Miranda to pay $5,000 and Frank Smeenk to pay $5,000 to the Commission in respect of a portion of the Commission's costs for this matter.

RECENT SPEECHES

DEALING WITH CHANGE:

Shaping Financial Regulation for the Future

Remarks by David A. Brown, Q.C. Chair, Ontario Securities Comission, The Canadian Club March 12, 2001

The traditional four pillars - banks, insurance companies, securities firms and trust companies - have melded together. Deregulation opened them up. Innovation, new technologies, and customer demand for new products drove them onto each other's turf - along with new participants. More and more financial services are being delivered by huge conglomerates integrated across the sectors. In fact, for most financial players, the left-hand sides of their balance sheets - the revenue generating side - are now almost identical.

The industry has been remodeling itself. Shouldn't the regulatory system be doing the same? That identical question is being raised in virtually every jurisdiction in the industrialized world.

On four continents, we're seeing regulatory reforms to ensure consistent regulation of similar activities - regardless of the sector in which the financial institution was traditionally grouped. As the Wall Street Journal put it last week - "the idea is catching on." In many parts of the world, harmonization is being pursued through horizontal integration. In Australia, a single regulator now regulates the market conduct of all financial institutions. In the U.K., nine separate agencies have been combined into one, regulating all aspects of securities, insurance, pensions and banking. A similar integrated concept is being followed by Germany, Japan, and the Republic of Ireland. To date, at least 15 countries have moved to consolidate regulators. Governments all over the world are coming to terms with the need to regulate on the basis of a financial institution's current activity, rather than its historic nature. The only difference is in the precise regulatory formula, based on distinct political traditions and culture.

Ontario's proposal is in keeping with the latest global thinking. As a single agency, the proposed Ontario Financial Services Commission will be better positioned to ensure consumer and investor protection from unfair, improper or fraudulent practices, and to vigorously enforce clear and unambiguous rules. It will simplify financial service regulation by providing investors, consumers and financial service industry participants with one window to turn to.

Consumers will be able to enjoy the same comfort level in dealing with any entry point to the financial system. Consistent purchase disclosure documents will make it easier to compare products across sectors. Consistent proficiency standards will apply to your insurance agent, pension consultant, financial planner, securities salesperson and mutual fund salesperson. Decision-making will be streamlined, and duplication eliminated. All financial institutions will be provided with a level playing field; similar financial products will be subject to similar regulation.

develop a set of standards that could be accepted by all regulators for cross-border offerings. In May 2000, IOSCO endorsed a set of core International Accounting Standards (IAS) developed by the IASC and recommended that member regulators accept them, with limited supplementary information.

The Canadian Accounting Standards Board has, for the past few years, been working with major foreign standards-setting bodies toward the convergence of accounting standards. The goal of convergence is to develop IAS as a single set of internationally accepted accounting standards. Recognizing that international convergence will take some years and that Canada's most important foreign market is the U.S., the AcSB has also been working on a more accelerated basis to eliminate the major differences between Canadian and U.S. GAAP.

Canadian securities rules require Canadian-based reporting issuers to use Canadian GAAP in all their financial statement filings. Foreign-based reporting issuers may use the accounting principles of their home jurisdictions, but must reconcile to Canadian GAAP for financial statements in a prospectus. They are not generally required to provide a reconciliation for continuous disclosure filings except in British Columbia. In some other jurisdictions, a requirement to reconcile is often imposed as a condition of any continuous disclosure exemption provided to a foreign issuer.

Canadian Issuers in the U.S.

A significant number of Canadian issuers have raised capital or listed their securities in the United States. They are required to file their continuous disclosure financial statements with the U.S. Securities and Exchange Commission, including a reconciliation from their Canadian GAAP financial statements to U.S. GAAP. Some Canadian issuers have chosen to prepare a full set of U.S. GAAP financial statements to increase their market acceptance in the U.S.

We have been told that the current rules deter foreign issuers from doing public offerings in Canada, denying investment opportunities to Canadian investors.

We have been told that the current rules deter foreign issuers from doing public offerings in Canada, denying investment opportunities to Canadian investors. We have also been told that, for Canadian issuers listed in the U.S. who choose to prepare a complete set of U.S. GAAP statements, any benefit to Canadian investors of continuing to prepare Canadian GAAP statements is outweighed by the costs involved.

There are, however, some difficult issues that complicate the question of accepting IAS or U.S. GAAP for regulatory filings in Canada. These include:

- *Comparability* — Having as many as three different sets of accounting standards for reporting issuers would make it more difficult for Canadian investors and analysts to compare results for different issuers.
- *Professional capacity* — Canadian accounting professionals have limited knowledge of U.S. GAAP and virtually no experience with IAS. A significant effort would be required for issuers, auditors and regulators to build sufficient expertise to handle increased use of these other sets of standards while maintaining high standards of compliance.
- *Other Statutory Requirements* — Even if the CSA exempts Canadian issuers from filing Canadian GAAP financial statements, they may still be required under corporate or tax statutes. The desired cost savings would be achieved only if these other requirements can be removed.

The Discussion paper is available on the Ontario, B.C., and Alberta website.

To assist in determining how to move forward, the CSA are seeking responses to 17 detailed questions. These questions, which are set out in the Discussion Paper, are supported by an extensive examination of the issues that need to be addressed to facilitate any proposed changes from the current regime. We encourage you to review the paper and respond to as many of the questions as you can based on your experience. Responses should be provided by June 30, 2001, to ensure that your views are considered.

For more information please call **John Carchrae**, Chief Accountant, (416) 593-8221.

Perspectives is published quarterly by the Communications Branch of the Ontario Securities Commission. *Perspectives* welcomes letters to the editor.

If you wish to be on the mailing list for *Perspectives*, please contact us at:

Perspectives,
Ontario Securities Commission
Corporate Relations Branch
20 Queen St. West
Toronto, M5H 3S8
(416) 593-8117

The OSC web site, www.osc.gov.on.ca includes:
Information on the OSC; Investor Information, Rules and Regulations, Enforcement Information and Market Participants.